No. 12,775

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LLOYD A. FRY ROOFING COMPANY; VOLNEY FELT MILLS, INC.; ST. JOHNS MOTOR EXPRESS COMPANY; BUILDING AND CONSTRUCTION TRADES COUNCIL OF PORTLAND AND VICINITY, AFL; AND MILLWRIGHTS AND MACHINE ERECTORS UNION, LOCAL NO. 1857, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
A. NORMAN SOMERS,
Assistant General Counsel,
OWSLEY VOSE,
MELVIN POLLACK,
Attorneys,
National Labor Relations Board.

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AUTHORITIES CITED

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JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board for enforcement of its order (R. 200–205) issued against respondents on April 28, 1950, pursuant to Section 10 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, Secs. 151, *et seq.*).[1] The Board's decision and order are reported in 89

[1] The pertinent provisions of the Act are set out in the Appendix, *infra*, pp. 18–22.

N. L. R. B. No. 93. This Court has jurisdiction under Section 10 (e) of the Act, because the unfair labor practices in question occurred at Portland, Oregon, within this judicial circuit.

STATEMENT OF THE CASE

A. The Board's findings of fact and conclusions of law [2]

1. The business of the respondent companies

Lloyd A. Fry Roofing Company (hereinafter referred to as Fry) and its subsidiary, Volney Felt Mills, Inc. (hereinafter referred to as Volney),[3] are engaged in the manufacture, distribution, and sale in interstate commerce of roofing products (R. 144–146; 57–58).[4] Each concern does a total annual business at its several plants throughout the United States in excess of $1,000,000 (*ibid.*). At its plant in Portland, Oregon, Fry annually purchases more than $100,000 worth of materials and supplies, and produces more than $200,000 worth of asphalt roofing (R. 145; 57). More than 20 percent of the goods purchased and sold by Fry moves across state lines (*ibid.*). Volney does an equivalent volume of interstate business during the course of its manufacture of roofing felt at its Portland mill (R. 145–146; 58). The Portland roofing plant and the felt mill, which is the facility involved in this case, are operated as an integrated enterprise, the

[2] The Board adopted the findings, conclusions, and recommendations of the Trial Examiner with certain additions and modifications (R. 195).

[3] Fry and Volney have directors and officers in common (R. 147; 58).

[4] Record references which precede the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

mill supplying the dry felt (paper) base used in the manufacture of asphalt roofing (R. 148; 102–103).[5]

The Portland felt mill was built for Fry in 1947 by an out-of-state contractor, Campbell-Lowrie-Lautermilch Corporation of Chicago, Illinois (hereinafter referred to as the Building Contractor) (R. 149; 41–42).[6] In August 1947, Fry separately entered into an agreement with St. Johns Motor Express Company (hereinafter referred to as St. Johns) covering the installation at the mill of machinery valued at $150,000, which Fry had previously shipped from Wisconsin to Portland (R. 149–152; 60–61, 78–79, 99).[7] In the course of its business at Portland, St. Johns annually renders services in installing industrial machinery and as a motor carrier valued in excess of $1,000,000, of which more than 60 percent is performed in interstate commerce (R. 146; 6–7, 13).

Upon the foregoing facts, the Board concluded that the building operations of Fry, Volney, and St. Johns affect commerce within the meaning of the Act (R. 195–196).

2. The unfair labor practices

The agreement of August 1947 between Fry and St. Johns reserved to Fry "complete supervision

[5] The mill and plant front on the same street and are separated by a single railroad track (R. 62, 102). The mill is a one-story structure 480 feet long by 150 feet wide, with a partial basement (R. 110).

[6] The cost of construction of the felt mill was ultimately charged to Volney by Fry (R. 109). Before completion of the mill in January 1948, the Portland roofing plant obtained its roofing felt from Volney mills in other states (R. 102–104).

[7] This mill machinery was stored in the roofing plant pending installation in the mill under construction (R. 149; 61–62).

[and] control" over the installation of machinery in the mill then under construction (R. 150–151; 77). A day or two before this installation work began, John R. Baker, Chief Engineer for Fry and Volney, instructed James A. Taylor, St. Johns' foreman, to hire "Machinists 63, A. F. of L." (R. 152; 113).[8] Accordingly, Taylor hired six members of Local 63, affiliated with the International Association of Machinists (R. 152–153; 113–114).[9]

On August 28, 1947, one Sandstrom, business agent for Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL (hereinafter referred to as the Millwrights), spoke to Foreman Taylor about having the machinists "put off the job" and replaced by millwrights (R. 153; 94–95). The next day, Sandstrom and Fred H. Manash, secretary for Building and Construction Trades Council of Portland and Vicinity, AFL (hereinafter referred to as the Council), requested Taylor to discharge the machinists (R. 153–154; 67). Foreman Taylor referred Sandstrom and Manash to V. J. Eggleston, St. Johns' office manager in Portland (*ibid.*).

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[8] Baker sought to avoid a repetition of labor difficulties with the International Association of Machinists experienced several years before in connection with the installation of machinery in the Portland roofing plant (R. 50, 107–108). Baker and Taylor seemingly did not know that the IAM was no longer affiliated with the American Federation of Labor (R. 51–52, 113).

[9] Daniel F. Donnelly, John O'Neel, Ray Baker, and William Bozarth reported for work on August 27, 1947 (R. 152; 65–66). F. T. Bolton and John Kesch reported for work on September 2 (R. 153; 93).

The Building Contractor and the Council had executed a closed-shop contract dated February 21, 1947, which by its terms applied exclusively to that contractor and to any projects which it might undertake in the Portland area (R. 159; 37–38). Neither Fry, Volney, nor St. Johns were parties to this contract (*ibid.*). Upon meeting with Eggleston that same day, August 29, 1947, Manash asserted that the machinists had been hired in violation of a contract held by the Council and that "if it wasn't going to be kept he was going to * * * pull those men off that job" (R. 156; 83). Manash declared that St. Johns' refusal to replace the machinists with millwrights "might reach the point where [St. Johns'] teamsters could not deliver to jobs on which A. F. of L. carpenters were employed" (*ibid.*). Manash informed St. Johns' Officer Manager Eggleston that he was "citing" him to appear before the Council on September 2, 1947, to show cause why St. Johns should not be placed on the official "unfair list" maintained by the Council and handed him a letter to that effect (R. 154–155; 67–69, 83–85). Eggleston told Manash that he would take the matter up with Fry (R. 157; 80–81).

Office Manager Eggleston then notified Chief Engineer Baker of Fry and Volney, and B. B. Alexander, Portland manager for Fry and Volney, of Manash's contract claim and threat to stop further construction of the felt mill if the machinists were not discharged and millwrights hired in their place (R. 157; 81–82).[10]

[10] Eric Norling, superintendent in charge of construction for the Building Contractor, also reported to both Baker and Alex-

Baker and Alexander advised Eggleston that "they couldn't possibly stand having a work stoppage on that building because it was necessary to get a roof over their head in order that the work could progress and that they get the machinery installed and the felt mill operating on a certain particular date" (R. 157; 81–82).[11] Eggleston then consulted St. Johns' attorneys and was advised that St. Johns was an agent for Fry and Volney, and that "if Volney Felt Mills or Fry Roofing Company told us to fire the machinists and hire Millwrights that is exactly what we should do * * *" (R. 157–158; 87–88).

On the afternoon of September 2, 1947, Chief Engineer Baker instructed Foreman Taylor to discharge the machinists and hire millwrights, saying, "it is a case of either changing crafts or stopping all our building" (R. 158; 115). Taylor accordingly discharged the machinists (R. 158; 116).[12]

Upon the foregoing facts, the Board found, that by discharging the six machinists on September 2, 1947, Fry, Volney, and St. Johns violated Sections 8 (a) (3) and 8 (a) (1) of the Act, and that by causing them to do so, the Council and the Millwrights violated Sections 8 (b) (2) and 8 (b) (1) (A) of the Act (R. 196–197).

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ander that Manash had threatened to stop further mill construction unless the machinists were "taken off" the job (R. 107–109, 47–49).

[11] Baker and Alexander knew of the contract between the Council and the Building Contractor but did not consider this contract applicable to the machinery installation work (R. 109, 111, 51–54).

[12] Ray Baker, who had left work early, was notified of his dismissal the next morning, September 3 (R. 158; 97, 116).

B. The Board's order

The Board's order (R. 200–205 requires Fry, Volney, and St. Johns to cease and desist: from discouraging membership in the IAM or any other labor organization of their employees, or encouraging membership in the Millwrights or any other labor organization of their employees, by discharging any of their employees or otherwise discriminating in regard to their employment; and from in any other manner interfering with, restraining, or coercing their employees in the exercise of their rights under the Act.

The Board's order requires the Council and the Millwrights to cease and desist: from causing, by threatening strike action, Fry, Volney, or St. Johns to discharge or otherwise discriminate against employees because they are not members in good standing of the Millwrights, except in accordance with Section 8 (a) (3) of the Act; from in any other manner causing or attempting to cause Fry, Volney, or St. Johns to discriminate against their employees in violation of Section 8 (a) (3) of the Act; and from restraining or coercing employees of Fry, Volney, or St. Johns in the exercise of their right to refrain from any or all of the concerted activities guaranteed by Section 7 of the Act.

Affirmatively, the Board's order requires the respondent companies and unions jointly and severally to make whole each of the six discharged machinists for any loss of pay suffered because of the discrimination against him, and to post appropriate notices.

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ARGUMENT

I. The Board properly assumed jurisdiction over the unfair labor practices here involved

Respondents contended before the Board that the activities of Fry, Volney, and St. Johns in connection with the construction of the felt mill for Volney were purely local in character and hence did not affect commerce within the meaning of the Act. In support of this contention, respondents argued that these construction activities must be considered separately from the other, admittedly interstate, activities of the respondent companies, and that when so considered these activities had only an indirect and remote effect upon interstate commerce. The restrictions which respondents would place upon the scope of the Board's power to prevent unfair labor practices affecting commerce run counter to established principles.

It has long been established and repeatedly reaffirmed by the Supreme Court that the test upon which the application of the Act turns is whether an actual or threatened "stoppage of * * * operations by industrial strife" would or might tend to impede or disrupt the free flow of goods in their normal channels in interstate commerce. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41–42.[13] As stated by the Supreme Court in *Polish National Alliance* v. *N. L. R. B.*, 322 U. S. 643, 647–648:

[13] Accord: *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453; *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197; *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601; *N. L. R. B.* v. *Bradford Dyeing Association*, 301 U. S. 318; *Polish National Alliance* v. *N. L. R. B.*, 322 U. S. 643.

> Congress in order to protect interstate commerce from adverse effects of labor disputes has undertaken to regulate all conduct having such consequences that constitutionally it can regulate * * *. Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce. * * * By the * * * Act, Congress gave the Board authority to prevent practices tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. * * * Congress therefore left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress.

Tested by the foregoing principles, the application of the Act to the present case is clear. The mill was constructed for Fry and its subsidiary, Volney, on a site adjacent to the Fry roofing plant in order to supply the roofing plant with the felt base used in the manufacture of asphalt roofing, and constituted, as the Board found (R. 148), an "enlargement" of the roofing plant, which is admittedly engaged in interstate commerce on a considerable scale (*supra,* p. 9). The building itself, a large structure, was being erected by an Illinois corporation and necessarily involved a considerable flow of supplies and materials in interstate commerce. The installation of the machinery in the building, with which the employees here involved were concerned,

was being handled by a concern engaged in machinery installation work in more than one state (*supra,* p. 3). The work of this concern, St. Johns, was a regular part of its business amounting to more than $1,000,000 annually, of which 60 percent (including its interstate trucking operations) is performed in interstate commerce (*ibid*). The machinery being installed, valued at more than $150,000, had recently been shipped to the mill from Wisconsin (*ibid*).

A strike by construction or machinery installation men at the mill not only would hinder Fry in the conduct of its interstate roofing business, in that the commencement of operations would be delayed (see *Shirley-Herman Co., Inc.,* v. *International Hod Carriers,* 182 F. 2d 806, 808 (C. A. 2)), but it would interfere with the flow across State lines of supplies and materials essential to the completion of the building. This latter factor alone is a sufficient basis for the Board's assertion of jurisdiction in this case *N. L. R. B.* v. *Townsend,* 185 F. 2d 378 (C. A. 9), certiorari denied, April 16, 1951; *N. L. R. B.* v. *Van de Kamp,* 152 F. 2d 818, 819–820 (C. A. 9); *Newport News Shipbuilding & Dry Dock Corp* v. *N. L. R. B.,* 101 F. 2d 841, 843 (C. A. 4), affirmed on other grounds, 308 U. S. 241; *Virginia Electric and Power Co.* v. *N. L. R. B.,* 115 F. 2d 414, 416 (C. A. 4), affirmed in this respect, 314 U. S. 469, 475; *N. L. R. B.* v. *Kistler Stationery Co.,* 122 F. 2d 989, 990 (C. A. 10); *N. L. R. B.* v. *Suburban Lumber Co.,* 121 F. 2d 829, 831–833 (C. A. 3), certiorari denied 314 U. S. 693;

N. L. R. B. v. *J. L. Brandeis & Sons,* 142 F. 2d 977, 981 (C. A. 8), certiorari denied 323 U. S. 751.

Further evidencing the disruptive effect upon interstate commerce of the unfair labor practices with which we are here concerned is the fact that respondent unions, in their efforts to cause St. Johns to discharge the machinists here involved, threatened to place St. Johns on an unfair list and to disrupt its motor carrier services by preventing deliveries "to jobs on which A. F. of L. carpenters were employed" (*supra,* p. 5). Manager Eggleston testified that this threat if carried out would have materially affected St. Johns' business (R. 91).

Thus, the threat presented to the interstate operations of the respondent companies and to the flow of supplies and materials necessarily involved in the construction and equipment of the mill fully meets the established test of the Act's coverage. The circuit courts of appeals have uniformly upheld the Board's jurisdiction over enterprises in the construction industry, many of them engaged in operations of less magnitude than those of respondents in the instant case. *Los Angeles Building and Construction Trades Council et al.* v. *LeBaron,* 185 F. 2d 405 (C. A. 9), affirming 84 F. Supp. 629 (S. D. Calif.); *International Brotherhood of Electrical Workers, Local 501* v. *N. L. R. B.,* 181 F. 2d 34, 36–37 (C. A. 2), certiorari granted, 340 U. S. 902; *Shore* v. *Building & Construction Trades Council,* 173 F. 2d 678, 680–681 (C. A. 3); *N. L. R. B.* v. *Local 74, United Brotherhood of Carpenters and Joiners of*

America, 181 F. 2d 126, 129–130 (C. A. 6), certiorari granted, 71 S. Ct. 277; *United Brotherhood of Carpenters and Joiners of America* v. *Sperry,* 170 F. 2d 863, 868 (C. A. 10); *Slater* v. *Denver Building and Construction Trades Council,* 175 F. 2d 608 (C. A. 10); *Denver Building and Construction Trades Council* v. *N. L. R. B.,* 186 F. 2d 326 (C. A. D. C.), certiorari granted, 340 U. S. 902.[14]

In the light of the foregoing, it is submitted that the Board properly found that "the building operations of the Respondent Companies affect commerce and that the policies of the Act will be effectuated by the exercise of our jurisdiction" (R. 195).

II. The Board properly found that respondent companies violated Section 8 (a) (3) and 8 (a) (1) of the Act by discharging six machinists at the insistence of the respondent unions and that the respondent unions violated Sections 8 (b) (2) and 8 (b) (1) (A) of the Act by causing these discharges

As shown by the Board's findings and the supporting evidence summarized above, pp. 4–6, the Council and the Millwrights caused the discharge of the six machinists employed by St. Johns as agent for Fry and Volney by threatening to strike the mill construction project. Thus, when notified of the strike threat by Eggleston, St. Johns' manager, Chief Engineer Baker and Manager Alexander decided that Fry and Volney

[14] In this case, which involves the same unfair labor practice charges as those involved in *Sperry* v. *Denver Building Trades Council,* 77 F. Supp. 321, relied on by respondent companies, the Court of Appeals for the District of Columbia Circuit reached the opposite conclusion from that reached by the District Court in the case cited by respondents, and fully upheld the Board's jurisdiction under the commerce clause to reach the unfair labor practices there involved.

could not afford a work stoppage, and Baker then instructed Foreman Taylor to discharge the machinists (*supra*, pp. 5–6).[15] It is admitted that the machinists were discharged because they were not members of the A. F. L. Millwrights (R. 8, 13, 17, 22). The conduct of the respondent companies therefore comes squarely within the proscription of Sections 8 (a) (1) and (8) (a) (3) of the Act, and the conduct of the respondent unions comes squarely within the proscription of Sections 8 (b) (2) and 8 (b) (1) (A) of the Act unless the discharges were protected under the proviso to Section 8 (3), *infra*, p. 18, by a valid union security contract between the Council and the respondent companies. Respondents contend that the discharges were protected by such a contract.

[15] The respondent companies argued before the Board that they were protected and justified in discharging the machinists because they took this action under economic duress. "But, as has more than once been said, relief for a violation of the labor relations law cannot be withheld because of economic pressure or pinch upon an employer by a labor union engaged in a jurisdictional labor dispute." *N. L. R. B.* v. *O'Keefe & Merritt Mfg. Co.*, 178 F. 2d 445, 449 (C. A. 9) (citing *N. L. R. B.* v. *Star Publishing Co.*, 97 F. 2d 465 (C. A. 9); *N. L. R. B.* v. *N. B. C.*, 150 F. 2d 895 (C. A. 2)). Respondent St. Johns further argued that, in discharging the machinists at the request of Chief Engineer Baker, it incurred no liability under the Act because it took this action solely as an agent of Fry and Volney. While St. Johns consulted with Fry before making the discharges, it was not obliged to do so under its contract with Fry, and its action in discharging the men was in legal contemplation its own act. In any event, since Section 2 (2) of the Act defines the term "employer" to include "any person acting as an agent of an employer," the Board properly found St. Johns responsible for the discharges, even if it be deemed an agent of Fry.

As we have seen, *supra,* p. 5, on February 21, 1947, the Building Contractor and the Council entered into a closed-shop contract which by its terms applied exclusively to that contractor and to any projects which it might undertake in the Portland area.[16] This contract was not signed by the respondent companies. By letter dated March 7, 1947, R. R. Lautermilch, president of the Building Contractor, notified the Council that machinery might be installed in the mill under construction by another contractor but that Fry had assured it that the work would "be done on a fair basis to you whether it is done under our supervision or not" (R. 198, 160–161; 38–39). Fry and Volney contend that the contract between the Building Contractor and the Council was entered into in their behalf and that Lautermilch's letter of March 7, 1947, confirmed this fact. However, as shown at p. 5, *supra,* the contract on its face does not purport to bind Fry and Volney, and the alleged letter of confirmation from Lautermilch is not couched in such terms as would be binding on Fry and Volney, assuming that Lautermilch was authorized to bind them. And Lautermilch was not authorized to commit Fry and Volney in this regard. There is no evidence that he was and the relevant evidence is to the contrary. Neither Chief Engineer Baker nor Manager Alexander had any knowledge of the existence of any closed-shop contract which was binding

[16] The validity of this contract is not in issue. Section 102 of the amended Act, *infra,* p. 22.

on Fry and Volney (R. 109, 111, 51–54).[17] Furthermore, since the Building Contractor, of which Lautermilch was president, had only the contract for the erection of the building and not the installation of the machinery (*supra*, p. 15), no general authority on the part of Lautermilch to bind Fry and Volney to a closed-shop contract covering the machinery installation employees can be inferred. In these circumstances the Board properly concluded that the discharges were not protected by any valid closed-shop contract between the companies and the council.[18] It follows that the Companies, in discharging the machinists here involved because they were not members

[17] While Chief Engineer Baker was instructed by Fry and Volney to have machinists affiliated with the A. F. of L. employed by St. Johns to install the mill machinery, Baker understood that these instructions were given not because of any contract obligation but to avoid a repetition of labor trouble experienced some years before during the construction of the Fry roofing plant (R. 50–51, 107–108).

[18] The respondent unions argued before the Board that the discharged machinists were not entitled to relief because they had attained their employee status illegally through the IAM's operation of a hiring hall. This argument is wholly without factual basis, for, as the Board found (R. 197, n. 5), "the decision to hire members of one union only was that of Respondents Fry and Volney and was not required by contract with the charging Union." In any event, the "unclean hands" doctrine urged by the respondent unions is inapplicable to Board proceedings. *N. L. R. B.* v. *Carlisle Lumber Co.*, 94 F. 2d 138, 146 (C. A. 9), certiorari denied, 304 U. S. 575; *N. L. R. B.* v. *Hearst*, 102 F. 2d 658, 663 (C. A. 9); *Berkshire Knitting Mills* v. *N. L. R. B.*, 139 F. 2d 134, 141 (C. A. 3), certiorari denied, 322 U. S. 747; *N. L. R. B.* v. *Fickett-Brown Mfg. Co.*, 140 F. 2d 883, 884–885 (C. A. 5).

of the A. F. L. Millwrights, and the union respondents in causing these discharges, violated Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and (2) of the Act, respectively. Compare *N. L. R. B.* v. *National Maritime Union,* 175 F. 2d 686 (C. A. 2) certiorari denied, 338 U. S. 954, where the Second Circuit held an attempt by a union to compel the employer to continue hiring practices which resulted in discrimination against nonmembers of the union violated Section 8 (b) (2) even though it was not shown that any specific nonunion employees were actually discriminated against as a result of the union's conduct. In accord is *United Mine Workers* v. *N. L. R. B.,* 184 F. 2d 392, 393 (C. A. D. C.), certiorari denied, 71 S. Ct. 499.[19]

[19] The contention of respondent unions that Sections 8 (b) (1) (A) and 8 (b) (2) violate the First and Fifth Amendments to the Constitution is foreclosed by the *National Maritime Union* and *United Mine Workers* cases cited in the text, as well as by *Allen Bradley Local* v. *Wisconsin Board*, 315 U. S. 740; *Algoma Plywood Co.* v. *Wisconsin Board*, 336 U. S. 301; *Lincoln Federal Labor Union* v. *Northwestern Co.*, 335 U. S. 525; *American Federation of Labor* v. *American Sash Co.*, 335 U. S. 538.

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence on the record considered as a whole, that its order is valid and proper, and that a decree should issue enforcing the order in full as prayed in the Board's petition.

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
A. NORMAN SOMERS,
Assistant General Counsel,
OWSLEY VOSE,
MELVIN POLLACK,
Attorneys,
National Labor Relations Board.

MAY 1951.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Secs. 151, *et seq.*) are as follows:

UNFAIR LABOR PRACTICES

SEC. 8. It shall be an unfair labor practice for an employer—

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. III, Secs. 151, *et seq.*), are as follows:

DEFINITIONS

SEC. 2. When used in this Act * * *
(2) The term "employer" includes any per-

son acting as an agent of an employer, directly or indirectly * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * *

(3) By discrimination in regard to hire or tenure of employment or any term of condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following

the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. * * *

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person,

and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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EFFECTIVE DATE OF CERTAIN CHANGES

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

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